

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY)	
)	Docket 02-0837
Proposed General Increase in Gas Rates)	

**RESPONSE OF BEAR TO OBJECTION OF CILCO TO
PETITION OF BEAR TO INTERVENE**

Now comes Business Energy Alliance and Resources, L.L.C. (“BEAR”), and as its response to Objection of Central Illinois Light Company (“CILCO”) to the Petition of BEAR to Intervene, states as follows:

I. Introduction

CILCO’s legal argument is based on two sources, its overly broad interpretation of the holding of the Appellate Court in *Cable Television and Communications Association v. Ameritech Corporation*, 680 N.E.2d 445 (2nd Dist. 1997) (“CTCA”) and its improper use of a legislative interpretation principle. CILCO’s public policy argument is equally misguided and would result in the inability of large numbers of existing associations and their members to participate in ICC proceedings. The Commission should therefore reject CILCO’s objection and grant the intervention requested by BEAR.

II. Associations May Intervene In ICC Proceedings.

A review of CTCA shows that the decision supports BEAR’s right to intervene in CILCO’s rate case. In CTCA, the Court held that an association may not initiate a civil action in circuit court on behalf of its members. The Court said nothing about intervention in ICC proceedings. In fact, the Court noted that CTCA had intervened in and appealed several ICC proceedings. It is important to note that none of the other

Commission cases mentioned by the Appellate Court in *ICTA* were complaint cases.

Thus, *ICTA* was allowed to intervene in the ICC proceedings appealed in *Illinois-Indiana Cable Television Ass'n v. Illinois Commerce Comm'n*, 55 Ill. 2d 205, 302 N.E.2d 334 (1973), *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 268 Ill. App. 3d 471, 206 Ill. Dec. 49, 644 N.E.2d 817 (1994), and *People ex rel. O'Malley v. Illinois Commerce Comm'n*, 239 Ill. App. 3d 368, 180 Ill. Dec. 206, 606 N.E.2d 1283 (1993).

CILCO tries to avoid the obvious inapplicability of *CTCA* by relying upon Section 10-108 of the Public Utilities Act (“the Act”), which allows parties without a direct interest to initiate complaints on behalf of their members. CILCO then cites the legislative interpretation principle that “the inclusion of one exception excludes all others.” (CILCO Objection at 2). According to CILCO, by including a provision allowing non-interested parties to initiate complaints, the General Assembly intended to preclude non-interested parties from participating in any other ICC proceeding. Further, according to CILCO, by authorizing the Citizens Utility Board to intervene in ICC proceedings, the General Assembly was barring all other groups without a direct interest.

This rule of statutory construction, called *expressio unius est exclusion alterius*, is not as black and white as CILCO implies. As noted by the Illinois Supreme Court,

The maxim is not of universal application and should not be used to defeat the intent of the legislature. *Lehman v. Hill*, 414 Ill. 173; *Patteson v. City of Peoria*, 386 Ill. 460. Moreover, as pointed out in the *Patteson* case, where a statute contains an enumeration of certain things to which an act applies and also a general term or expression concerning the application of the act, the general term may be given full effect if the context shows the enumeration was not intended to be exclusive.

People ex rel County of DuPage v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485, 490-91 (1961)

The application of the statutory interpretation principle of *expressio unius exclusio alterius* should not result in absurd results. Yet, according to CILCO's theory, the General Assembly intended to allow groups such as associations to initiate complaints before the Commission, but it did not want them to intervene in existing cases. Such a result strains credibility. It should also be noted that the strict application of *expressio unius exclusio alterius* can lead to mischief in other parts of the Act. A review of the Public Utilities Act shows that the only mention of intervention by parties in Commission proceedings is in the portion of Section 10-110 addressing complaint proceedings. Does this mean that the General Assembly did not intend to allow intervention by any party in cases opened on the Commission's own motion? Of course not. If it did, then CILCO could have objected to the intervention of every party in this case.

Moreover, while the statutory construction principle of *expressio unius exclusio alterius* may be useful when a statute is ambiguous and there is no judicial guidance on a matter, it has no role when courts have clearly interpreted a statute. That has happened in this instance. In *Illinois Telephone Association v. Illinois Commerce Commission*, 67 Ill.2d 15, 364 N.E.2d 63 (1977), the Illinois Supreme Court held that the ITA may appeal an ICC order. That ICC proceeding was not a complaint case initiated by ITA; it was a rulemaking proceeding. Thus, as with BEAR, the ITA intervened in an existing case. The Supreme Court noted that, pursuant to its rules of practice, the Commission had allowed the ITA to intervene and participate in the case. Thus, it should be allowed to appeal the decision. The Court never questioned the right of the ITA to intervene in the ICC proceeding.

Although the Commission's rules have been modified since *ITA*, they still contain similar language authorizing intervention by associations. Under the Commission's rules of practice, "Person means any individual, partnership, corporation, governmental body or unincorporated association." 83 IAC 200.40. The Commission's rules then define an "intervenor" as a "person" who the Commission allows to participate in a case. 83 IAC 200.40.

Furthermore, the Commission's Rules of Practice explicitly state that associations may appear in ICC proceedings:

Section 200.90 Appearances

- ...
- c) A corporation or association may appear by any bona fide officer, employee or representative. . .

In summary, common sense, Commission precedent, the Commission's rules and clear case law support the intervention of BEAR.

III. CILCO's Public Policy Arguments Are Baseless.

CILCO raises a public policy objection that "BEAR cannot represent conflicting viewpoints and does not have any of its own interests to protect." CILCO also raises the specter of the National Rifle Association or the Union League Club of Chicago intervening in Commission proceedings. Neither concern is grounds to deny BEAR's Petition to Intervene.

As can be seen from the attached Affidavit of Ms. B.J. Hilton, the President of BEAR, its members are a homogeneous group. Because they are served under the same rate class, will potentially be served under the same new rate class, and have the same eligibility for transportation services, their interests are well aligned. As noted by Ms.

Hilton, BEAR members have input into positions being taken by BEAR, are kept aware of the advocacy of BEAR and may leave the organization at any time if they disagree with the direction of the organization.

Associations by their nature contain members with a range of interests. Sometimes those differences may be large and sometimes small. Compromises are often made in order to accommodate those differences. BEAR's members joined the association with the understanding that it will intervene in Commission cases and pursue positions in the best interests of its members. In any event, it is not clear what right CILCO has to insist that all of the members of an association intervening in its rate case have the same interests. Whether each member of BEAR is fully satisfied with the positions advocated by the organization is not a concern of CILCO's. The logical extension of CILCO's argument is that only groups with perfect alignment of interests may intervene in ICC proceedings. Such a rule would have the effect of reducing the size of such groups to a number that it is not cost efficient to intervene, not to mention place the utility or the Commission in the role of deciding whether a group is sufficiently uniform to be granted intervenor status.

The Commission is well aware that countless numbers of *ad hoc* and formally incorporated associations have intervened in Commission proceedings. A review of the service list of the current Commonwealth Edison Company delivery services proceeding (Docket 01-0423) shows that the intervenors include the Midwest Energy Alliance, the Environmental Law & Policy Center, Building Owners Management Association, and the National Energy Marketers Association. Intervenors in the pending Ameritech Illinois Section 271 proceeding (Docket 01-0662) include the Illinois Independent Telephone

Association and the Association of Communications Enterprises. Non-customer intervenors have also had a significant impact on the development of Illinois utility law over the past few decades. Named parties in important Illinois Supreme Court cases include: Business and Professional People in the Public Interest (*Business and Professional People in the Public Interest v. Illinois Commerce Comm'n*, 136 Ill.2d 192 (1989), and *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n* 146 Ill. 2d 175 (1991) and the Independent Voters of Illinois (*Independent Voters v. Illinois Commerce Comm'n* , 117 Ill. 2d 90 (1987)). Thus, numerous groups have raised, or are raising important issues in Commission proceedings.

Finally, as to the fear of where will it all end, the Commission's rules prevent groups such as the National Rifle Association and the Union League Club of Chicago from setting aside their guns and martinis in order to meddle with CILCO's rates. Section 200.200 requires that an intervention petition provide "A plain and concise statement of the nature of such petitioner's interest." If the Commission believes that an association, corporation or any other entity does not meet that standard, it can deny the petition to intervene.

In this case, BEAR has shown that it meets that standard. BEAR's Verified Petition to Intervene states

Many of the members of BEAR are substantial users of natural gas provided by Central Illinois Light Company ("CILCO"), both as retail customers and as transportation customers. Due to the changes in rates proposed by CILCO, those customers will be directly and substantially affected by any determinations that the Commission may make regarding the issues in the above-captioned proceeding.

BEAR Petition to Intervene, para. 2.

This statement should be sufficient to support BEAR's Petition to Intervene. The attached affidavit of Ms. B.J. Hilton provides additional detail regarding the nature of BEAR members in the CILCO territory and their interest in this proceeding. As can be seen, BEAR members have a direct interest in this proceeding and will be able to provide valuable input into the Commission's decision.

WHEREFORE, for the reasons stated above, the Petition to Intervene of Business Energy Alliance and Resources, L.L.C. should be granted.

Respectfully submitted,

Stephen J. Moore
ROWLAND & MOORE
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601
(312) 803-1000
smoore@rcn.com

ATTORNEY FOR Business Energy Alliance
and Resources, L.L.C.

Dated: March 12, 2003

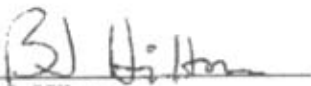
STATE OF ILLINOIS)

COUNTY OF SANGAMON)

AFFIDAVIT

I, B.J. Hilton, being first duly sworn, depose and state as follows:

1. I am the President of Business Energy Alliance and Resources, L.L.C. In that capacity, I have regular contact with BEAR members and am aware of their gas service rate class and the opinions of members on the rate increase of CILCO.
2. All BEAR members who take gas service from CILCO are presently served under Rate 2B "General Gas Service" and would qualify to take service under proposed Rate 600 if approved.
3. Many BEAR members also take transportation service from CILCO and are concerned about the provisions of proposed Rider T. Those who do not presently transport wish to have the option to do so under Rider T. The common goal of all BEAR members is to assure that they have rates for gas service that are fair, affordable and useable.
4. BEAR members have been made aware from communications with BEAR of the nature of the positions that BEAR intends to take in this proceeding.
5. BEAR members are able to terminate their membership at any time. No BEAR member has done so and no BEAR member has expressed dissatisfaction with any position that BEAR has indicated it wishes to take in this proceeding.
6. This concludes my Affidavit.


B.J. Hilton
President
Business Energy Alliance
and Resources, L.L.C.

Subscribed and Sworn
to before me this 10TH
day of March, 2003.




Notary Public

ILLINOIS COMMERCE COMMISSION

CERTIFICATE OF SERVICE

Stephen J. Moore
ROWLAND & MOORE
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601
(312) 803-1000
smoore@rcn.com

YOU ARE HEREBY NOTIFIED that I have, on this day, forwarded to the Chief Clerk of the Illinois Commerce Commission, for filing in the above-captioned docket, Response of BEAR to Objection of Central Illinois Light Company to the Petition of BEAR to Intervene, a copy of which is hereby served upon you.

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**Service List
Docket 02-0837**

Michael L. Wallace,
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: mwallace@icc.state.il.us

Edward C. Fitzhenry
Atty. for Caterpillar, Inc.
Lueders, Robertson, Konzen & Fitzhenry
1939 Delmar Ave.
P.O. Box 735
Granite City, IL 62040
E-Mail: efitzhenry@lrklaw.com

Edward J. Griffin
W. Michael Seidel
Attorneys for CILCO
Defrees & Fiske
200 S. Michigan Ave., Ste. 1100
Chicago, IL 60604
E-Mail: ejg@defrees.com
E-Mail: wmseidel@defrees.com

Dianna Hathhorn
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: dhathhor@icc.state.il.us

Mark G. Kaminski
Susan L. Satter
Assistant Attorneys General
Public Utilities Bureau
100 W. Randolph St., 11th Fl.
Chicago, IL 60601
E-Mail: mkaminski@atg.state.il.us
E-Mail: ssatter@atg.state.il.us

Karin M. Norington-Reaves
Citizens Utility Board
Ste 1760
208 S. LaSalle
Chicago, IL 60604
E-Mail: knorington@cuboard.org

Nick T. Shea
Director, Rates & Regulatory Affairs
Central Illinois Light Company
300 Liberty St.
Peoria, IL 61602
E-Mail: nshea@cilco.com

Stephen D. Underwood
Central Illinois Light Company
300 Libery St.
Peoria, IL 61602

Janis Von Qualen
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-Mail: jvonqual@icc.state.il.us

Mark G Woodworth
Attorney for Business Energy Alliance and Resources, L.L.C.
39 Estate Road
Geneseo, IL 61254
(314) 922-7090
dock3511@yahoo.com